APPEAL NO. 170260
FILED APRIL 3, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Contested case hearings were held on November 30, 2016, and December 13, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on (date of injury), and that the claimant did not have disability.

The claimant appealed the hearing officer's decision arguing that such determinations are contrary to the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a crush injury to his left foot resulting in a partial amputation of the foot on (date of injury), while operating a forklift on his employer's premises.

The hearing officer's finding that the claimant was not in the course and scope of his employment when he was injured on (date of injury), is supported by sufficient evidence and is affirmed.

In Finding of Fact No. 4, the hearing officer stated:

> 4. [The] [c]laimant was not unable to obtain and retain employment at wages equivalent to his pre-injury wage as a result of the (date of injury), claimed injury.

In the Discussion section of her decision the hearing officer further stated:

> Concerning the issue of disability, since the [c]laimant did not sustain a compensable injury on (date of injury), there can be no disability. Therefore, if [the] [c]laimant was unable to obtain and retain wages at his pre-injury wage, it was not due to the claimed work injury.

The medical records in evidence document that the claimant sustained multiple open fractures of the forefoot with significant soft tissue damage as a result of the (date of injury), claimed injury; that he was hospitalized for seven days during which he underwent amputation of the second, third, fourth and fifth toes; and that his physician

found him incapable of performing his work duties for a period of at least four months following the date of the injury.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

Given the severity of the injury and the medical record in evidence, the hearing officer's finding that the claimant was not unable to obtain and retain employment at wages equivalent to his pre-injury wage as a result of the (date of injury), claimed injury is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Section 401.011(16) defines disability as the inability *because of a compensable injury* [emphasis added] to obtain and retain employment at wages equivalent to the pre-injury wage. The hearing officer's determination that the claimant did not sustain an injury in the course and scope of his employment is affirmed. The hearing officer's determination that the claimant had no disability is affirmed on other grounds.

The true corporate name of the insurance carrier is **TECHNOLOGY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge